

To: Benton County Commissioners
From: Benton County Environmental Issues Advisory Committee (EIAC)
Date: 1/20/2017

OVERVIEW

A special meeting of the EIAC was held Jan 19, 2017 to put forth a recommendation to the BOC concerning the Forest Fund Lawsuit. After much discussion regarding environmental and legal ramifications, and many members torn both ways, the vote was 4 to stay-in and 3 to opt-out. This letter provides three (3) reasons from the members on why to “stay-in” and three (3) reasons from the members on why to “opt-out”.

“STAY-IN” EXECUTIVE SUMMARY

This recommendation pivots on our shared view that the lawsuit appears to only address contract disagreements. This view is further supported by Judge Daniel R. Murphy’s declaration (Linn County Circuit Court presiding judge) that this dispute solely concerns breach of contract. His ruling to exclude the intervention of environmental organizations from the proceedings speaks directly to this narrow interpretation. Further, the complaint neither addresses forest management practices nor contains any arguments for or against environmental policies. Finally, the nature of class-action offers just two distinct and compelling choices: a) if a party stays-in they are allowed to participate in potential settlements; b) if a party opts-out they retain the freedom to sue for better terms. In conclusion, the suit is on track to proceed without any consideration of defined forest management practices or potential environmental outcomes. Opting-out may appease some constituents but doing so has no bearing on the case. It also will leave possible settlement money on the table.

DETAILED ARGUMENTS IN SUPPORT

1. The complaint narrowly focuses on Breach of Contract and Claims for Relief. The lawsuit defines the basis of the Forest Land Trust initial contracts, interim rulings and corresponding contractual obligations. It addresses the State’s de-emphasis of revenue, and it proposes monetary judgements. There are no explicit passages for or against forest management, environmental policies, sustainability, or the like. In short, the many environmental and forest practice issues that are being held up as reasons to stay-in, opt-out, or even dismiss the suit are not eligible subjects of this litigation.
2. Judge Murphy denied a request by several environmental organizations, (e.g. Wild Salmon Center, Pacific Rivers Council) to intervene in the lawsuit. The judge held that their participation is unnecessary to determine if Oregon has violated contractual obligations to maximize County timber revenues. He wrote that “...applicants have no unique ability to offer evidence to the court concerning the breach of contract issues.” This stance nullifies environmental challenges to discredit the lawsuit.
3. Those opting-out of class-action suits are denied participation in any potential negotiations; staying-in guarantees their right to take part in votes, objections, appeals or modifications to possible settlements and arbitration.

- a. If the claim prevails but BC has opted-out, BC will still be unwittingly subjected to the outcome of the suit since Linn County's stated intention is to request future damages for Trust Forest lands "...sufficient to yield a revenue stream of \$35.24 million per year in perpetuity." (1). If BC wishes to dispute this outcome after the fact they must individually challenge broader state forest management practices.
- b. If the suit fails and BC has stayed-in nothing will be gained, but most importantly it will also lose nothing. Alternatively, if the suit prevails and BC has opted-out, they will lose the opportunity to collect monetary damages.
- c. Some have suggested that opting-out may devalue the lawsuit to a point where other counties would choose not to participate. However, of the fifteen (15) counties many have confirmed their participation, or probably will, given their rural, resource-based economies, (Coos, Douglas, Josephine, Lane, Klamath, and Tillamook). To date only Clatsop County has opted-out.

"OPT-OUT" EXECUTIVE SUMMARY

Consideration of forest management practices or potential environmental outcomes cannot be separated from this court case. Counties opting out lessens the potential financial impact on the state, lessens pressure on the state to enter settlement discussions, and weakens the legal argument that all of the counties claim that a promise was broken. Three important environmental reasons to opt out:

DETAILED ARGUMENTS AGAINST

1. A majority of the EAC members believe that if Linn County wins the lawsuit it will be bad environmentally for State Forests. A third-party science review initiated by the Board of Forestry concluded that maximizing industrial timber harvest to the exclusion of other values will lead to negative outcomes. Benton County values the triple bottom line: economic, social, environmental, not favoring one value over the others. Therefore Benton County should not join the lawsuit because it does not reflect our values.
2. The climate change implications of the lawsuit are profound and disturbing. As Professor Mark Harmon of OSU has stated, the mismatch between the scientific understanding of carbon dynamics in forests and its application to public policy is "undermining the potential of the forest sector in helping to mitigate greenhouse gasses in the atmosphere." Our Pacific Northwest forests have among the highest potential for carbon sequestration in the world. To achieve our potential for carbon storage, a moral imperative for this time, we must use longer rotations in our forest management. Instead, the Linn County Lawsuit would apply pressure toward reducing the average rotation length on State Forest Lands. This would decrease critically needed carbon storage, and it might even change our State Forests into a net carbon emitter. This reduced carbon storage is precisely the opposite of what we should be doing at this time.
3. Raising the intensity of logging on State Forest Land as required by the lawsuit is fundamentally unsound and seriously risks the capacity of these forests to provide sustainable timber outputs

as well as the protections needed for watersheds, recreation opportunities, clear streams, and salmon habitat to support our salmon fisheries. Clearly, the levels of logging are fundamentally incompatible with responsible management. Opting out of this industry-promoted lawsuit is essential for sustaining the incredible and diverse values of our State Forest Lands. It is very strongly in the public interest to manage State Forests for biological diversity to the extent that they support older, more ecologically developed forest ecosystems. This is an essential insurance policy to protect the sustainability of our future forests and the many substantial benefits they provide.

Members:

Hank Erbele- Chair

Debra Higbee-Sudyka – Vice Chair

David Smith

Richard Heggen

Jackie Hastings

John Sarna

Max Shahnewaz

Janet Napack

Jennifer Ward

John Luna